

consumer benefits from open competition among numerous and diverse providers, the opportunities for development of new and innovative applications of PCS technologies and the corresponding benefits of launching PCS services based upon "local " MSA/RSA service areas. A critical factor in this structure is the need to create realistic opportunities for a broad range of businesses to participate, including small businesses, independent start-up entrepreneurship, "local" businesses and others. With the development of PCS technologies still in a formative stage, we believe that all consumers will ultimately benefit from the creative vision which many providers, large and small, will bring to the deployment of PCS services.

(b) Use of Comparative Hearings Will Delay The Initiation Of PCS Service, Burden The Commission's Workload And Add Enormously To The Expense Of Application Processing With No Countervailing Public Benefits.

We support the Commission's tentative conclusion that comparative hearings "...would not be an appropriate licensing mechanism for PCS."³⁴ We agree with the Commission that comparative hearings will be slow and costly to the Commission and applicants and will delay the deployment of PCS possibly for years. We think that comparative hearings are also a very poor means of evaluating the full range of marketplace influences which will shape the future development of PCS technologies. Any

³⁴ PCS NPRM, ¶82

comparative criteria the Commission might select would be flawed at best and possibly worse. There is no assurance that any proposed comparative criteria will promote use and development of PCS technologies any more effectively than the qualified lottery selection which we support.

(c) The Commission Should Not Approve The Privatization Of
PCS Licensing Functions Under The "National Consortium"
Proposal Of MCI Or The "Franchising" Proposal Of APC.

The "national consortium" proposal of MCI and the "franchising" proposal of APC are unjustified, unnecessary and should be rejected.

MCI's "national consortium" plan proposes to relieve the Commission of its administrative licensing responsibilities by substituting the judgment of a nationwide system manager, such as MCI, for Commission selection of regional or local PCS licensees. APC's "franchising" proposal is analogous in that it would permit any licensee of an MTA service area to "franchise" or to sublicense his PCS spectrum for use within designated portions of that MTA service area.

Substitution of the judgement of a nationwide system manager or an MTA system licensee for the regulatory decision-making of the Commission, as proposed by MCI and APC, is not necessary or desirable. The qualified lottery procedures which we support

will permit timely decision-making. The "transaction" costs and delays in the implementation of PCS services are not avoided under MCI's and APC's proposal. They merely show up in different ways as described by Pacific Telesis.³⁵ We also anticipate that adoption of either MCI's or APC's proposals could raise serious issues about possible unlawful delegation of the Commission's regulatory responsibilities, which in turn could add measurably to the cost and delay of deploying PCS technologies.

SECTION VII - PCS REGULATORY STATUS

COMMON CARRIER REGULATORY CLASSIFICATION SHOULD BE ADOPTED FOR PCS

The filings of all four state commissions that addressed the regulatory status issue,³⁶ as well as the NARUC³⁷ and numerous other commenters³⁸ support classifying PCS as common carriage. They provide strong reasoning for this position. The SBA, for example, points out (pp.28-29) that, as a service that will compete and become integrated with the wireline voice and data network, PCS should embody the same common carriage principles. The PaPUC (pp.10-11) supports common carrier classification to

³⁵ Pacific Telesis Comments, pp. 27-28.

³⁶ See California PUC at 4-2; NYDPS at 13-16, PaPUC at 10-12; Wisconsin PSC at 6-8.

³⁷ NARUC at 3-20.

³⁸ E.g., SBA at 28-29; NRTA/OPASTCO at 16-18; NTCA at 10-11; USTA at 35-36; Corporate Technology Partners at 25.

assure requirements for just and reasonable rates, nondiscrimination and limitations on foreign ownership. As the PaPUC sums it up (p.11):

PCS, if unregulated, could siphon off, in toto, LEC customers from low-cost, high return areas, and would wreak havoc on the established wirebased network. Thus, if PCS is not effectively managed, the LEC local loop network, containing various subsidies which provide universal telephone service, could be jeopardized. Therefore, the Commission believes that the classification of PCS service as common carrier service is crucial.

Other comments, such as McCaw, (pp. 44-45) argue that PCS providers should have the same federal and state regulatory responsibilities as their cellular competitors. McCaw stresses the double competitive advantages that will result if one competitor, PCS, eludes common carrier regulation, but nevertheless enjoys common carrier interconnection rights.

Some comments instead claim that private carrier status should be extended to cellular providers to achieve regulatory parity.³⁹ However, conferring the unwarranted competitive advantage of private carriage on both cellular and PCS providers would multiply the unfair competitive burdens borne by local exchange carriers forced to compete against PCS and cellular, while subject to full common carrier obligations. Such expanded private carriage status would also exacerbate the crucial public interest concerns raised by the PAPUC.

³⁹ E.g., CTIA at 74-75, pp. 74-75.

Those that urge private carrier status for PCS for reasons other than to create a "level playing field" argue that the specialized functions support the classification,⁴⁰ that the service will develop faster with private carriage status,⁴¹ or often simply seem to seek preemption under 47 U.S.C. § 332(c)(2) to accommodate multi-state service areas⁴² or to avoid state regulatory "burdens."⁴³

The Commission cannot decree PCS to be private carriage simply to meet the general objectives of commenting parties.

⁴⁰ See CCI at 29-30 (claiming PCS will be used for specialized applications in a concentrated area like a hospital); see also, UTC at 39 (PCS may be used to serve internal needs of specific industries). Such arguments ignore the more likely development of PCS as another technology for existing public switched telephone network communications services.

⁴¹ Omnipoint at 16. This rationale is not fleshed out. It may mean that the unfair advantage of disparate regulation will help establish PCS or that avoiding state efforts to protect universal service will allow the service to thrive in spite of adverse effects on the universally available telephone network. Neither reason warrants private classification or preemption. Indeed, common carrier classification can speed deployment, particularly if (a) local telephone companies are encouraged to incorporate PCS technology into their existing ubiquitous public networks; (b) cellular providers are encouraged to become PCS licensees; and (c) common carrier classification promotes standard setting. Common carrier PCS providers are also likely to hasten deployment of public safety enhancements, such as improved 911 service.

⁴² E.g., APC at p.50, n.78. TDS explained in its opening comments and above why establishing large multistate license areas would not be sound public policy.

⁴³ See, Cablevision at 7-8; UTC at 39. Avoiding state "burdens" is not a legitimate goal for preempting state jurisdiction or trying to enlarge the reach of section 332 beyond what Congress enacted and intended.

As the comments show, there are legal standards for private carriage and for the limited deregulation and preemption available for qualified private land mobile services under 47 U.S.C. §332. For example, applying the functional test of National Assn. of Regulatory Commissioners v. FCC, 525 F.2d 630, 644, (D.C. Cir.), cert. denied, 425 U.S. 992 (1976), California PUC comments (p.5) that PCS "represents the next technological advance in the provision of basic communication services." The state filing further explains that the "nature of these communications services as common carriage does not change simply because they may be technologically provided on a wireless instead of a wireline basis." Nor, as state regulators explain,⁴⁴ can the Commission meet the strict standard for preemption set by Louisiana PSC v. FCC, 476 U.S. 355 (1986), and subsequent cases.

Moreover, the record also demonstrates why the Commission cannot employ 47 U.S.C. § 332 and § 153 as the means to classify PCS service generally as private land mobile service and to defeat state jurisdiction. As NARUC (pp. 5 - 10), the NYDPS (pp. 13-14) and the California PUC filing (pp. 7-8) explain, the statutory language and the legislative history of the private land mobile service section demonstrate clear Congressional intent to limit the section's application to dispatch-type

⁴⁴ California PUC at 6; NYDPS at 18-19; NARUC at 13-20.

systems and to preserve traditional common carrier services under federal and state common carrier regulation.⁴⁵

In short, the Commission does not have either a factual record or a legal rationale that can support classifying PCS as private carriage and ousting state jurisdiction. At most, the comments illustrate that a few limited PCS applications may qualify as private carriage and that the determination should be made based on specific service applications. Accordingly, the Commission should classify PCS generally as common carriage, leaving state jurisdiction of intrastate and local PCS communications undisturbed.

CONCLUSION

We have proposed five PCS providers per service area, use of "local" MSA/RSA service area boundaries and open eligibility including LECs and cellular operators because we believe that more is better than less in promoting competition and that the competitive marketplace should be left to shape the defining

⁴⁵ The DCPSC (pp. 2-4) also correctly argues that the Commission's interpretation that Section 332 -- that allows to classify land mobile services as private as long as they involve no resale of telephone service for profit -- is mistaken. However, Florida Cellular RSA Limited Partnership advises the Commission to ignore even the resale for profit restriction because, under current practice, the resale test is "honored more in its breach than its observance" (p.14). In contrast, Teleport Denver (p.8) opposes private classification under §332 because it believes that PCS providers will need to resell interconnected public switched network service and, therefore, private land mobile status would "thwart the effectiveness and potential of PCS."

attributes of the new PCS industry. The development of efficient geographic and ownership structures, the selection of the most advantageous technologies and deployment plans, the most desirable/valuable services and identification of the most efficient managers, all are factors which cannot be known now but will emerge as this industry matures. Adoption of our recommendations will uphold the vigorous role of competition in this maturing process and will make possible achievement of universal availability, rapid deployment, diversity of PCS offerings and robust competition, the core "values" which the Commission has indicated will guide its decisionmaking.

Respectfully submitted,
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January 8, 1993

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Attachment A

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American Mobile Telecommunications Association, Inc.	
American Paging, Inc.	
American Personal Communications	("APC")
American Petroleum Institute	
American Telephone and Telegraph Company	("AT&T")
Ameritech	("Ameritech")
AMSC Subsidiary Corporation	
Anchorage Telephone Utility	("Anchorage Tel. Utility")
Andrew Corporation	("Andrew")
Apple Computer, Inc.	("Apple")
Arch Communications Group, Inc.	
Associated PCN Company	("Associated PCN")
Associated Public-Safety Communications Officers, Inc.	
Associated Public-Safety Communications Officers, Inc., Arizona Chapter	
Association of American Railroads	

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BellSouth	("BellSouth")
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California Microwave, Inc.	
California People of the State of and Public Utilities Commission of the State of California	("California PUC")
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Cellular Service, Inc.	("Cellular Service")
Cellular Telecommunications Industry Association	("CTIA")
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Centel Corporation	("Centel")
Century Cellunet, Inc.	("Century")
Chesnee Telephone Company	("Chesnee Tel.")
Cincinnati Bell Telephone	("Cincinnati Bell")
Citizens Utilities Company	
City Utilities of Springfield, Missouri	
Clear Creek Mutual Telephone Company, et al	
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Comcast PCS Communications, Inc.	("Comcast")
Communications Satellite Corporation	("COMSAT")
Comsearch	("Comsearch")
Concord Telephone Company	("Concord Tel.")
Corporate Technology Partners	

Cox Enterprises, Inc.	("Cox")
dbX Corporation	
Dial Page, Inc.	
District of Columbia Public Service Commission	("DCPSC")
Domestic Automation Company	
Edison Electric Institute	
Electromagnetic Energy Policy Alliance	
Ericsson Corporation	("Ericsson")
Express Communications, Inc.	
Fleet Call, Inc.	("Fleet Call")
Florida Cellular RSA Limited Partnership	("Florida Cellular")
Freeman Engineering Associates, Inc.	
Gateway Technology, Inc.	
Global Enhanced Messaging Venture	
GTE Corporation	("GTE")
Harris Corporation-Farion Division	
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Hewlett-Packard Company	("Hewlett-Packard")
Hitachi Telecom (USA), Inc.	
Home Telephone Company	("Home Tel.")
Hughes Network Systems, Inc.	("Hughes Network")
IEEE Project 802 Local and Metropolitan Area Networks Standards Committee	
Illinois Commerce Commission	("Illinois Commerce Commission")
In-Flight Phone Corporation	

Information Technology Engineering Interdigital Communications Corp.	("Interdigital Comm.")
Kerrville Telephone Company	
Kleiner Perkins Caufield & Byers	
Knowledge Implementations, Inc.	
LCC Incorporated	
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McCaw Cellular Communications, Inc.	("McCaw")
MCI Telecommunications Corporation	("MCI")
Metriplex, Inc.	
Metrocall of Delaware, Inc.	("Metrocall")
Mobile Telecommunications Technologies Corporation	
Motorola, Inc.	("Motorola")
National Association of Broadcasters	
National Association of Business and Educational Radio, Inc.	
National Association of Regulatory Utility Commissioners	("NARUC")
National Communications System, Manager (Secretary of Defense)	("Sec. of Defense/ National Comm. System")
National Emergency Number Association	
National Rural Telecom Association and Organization for the protection and Advancement of Small Telephone Companies	("NRTA/OPASTCO")
National Telecommunications and Information Administration	("NTIA")

National Telephone Cooperative Association	("NTCA")
New York State Department of Public Service	("NYDPS")
North American Telecommunications Association	
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NYNEX Corporation	("NYNEX")
Ohio LINX	("Ohio LINX")
Omnipoint Communications, Inc.	("Omnipoint")
Pacific Communication Sciences, Inc.	
Pacific Telesis Group	("Pacific Telesis")
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Pagemart, Inc.	
Paging Network, Inc.	
Palmetto Rural Telephone Cooperative, Inc.	("Palmetto Rural Tel.")
Pass Word, Inc.	("Pass Word")
PCN America, Inc.	("PCN America")
PCN Communications, Inc.	("PCN Communications")
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Pennsylvania Public Utility Commission	("PaPUC")
Personal Communications Network Services of New York, Inc.	("PCN/NY")
PerTel, Inc.	("PerTel")
Phoenix Fire Department	
Piedmont Rural Telephone Cooperative, Inc. West Carolina Rural Telephone Cooperative, Inc. and Farmers Telephone Cooperative, Inc.	("Piedmont Rural Tel.")
Pinon Communications, Inc.	
Point Communications Company	("Point Comm.")

PowerSpectrum, Inc.	("PowerSpectrum")
Public Safety Microwave Committee	
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I, Abbie Weiner, a secretary in the law firm of Koteen & Naftalin, do hereby certify that a copy of the foregoing "Reply Comments of Telephone & Data Systems", was sent by first class U.S. mail, postage prepaid, on this 8th day of January, 1993 to the offices of the following:

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